

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES H. ROBINSON,

Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

: CASE NO. 5:07 CV 02092
: 5:01 CR 00259

: MEMORANDUM OF OPINION AND
: ORDER DENYING PETITIONER
: RELIEF UNDER 28 U.S.C. § 2255.

UNITED STATES DISTRICT JUDGE LESLEY WELLS

Petitioner James Howard Robinson ("Mr. Robinson") seeks to vacate or correct his sentence pursuant to 28 U.S.C. § 2255. (Doc. 99: 1 CR 259). In his three-paragraph pleading, Mr. Robinson maintains, through counsel, that his "sentence was imposed in violation of the Constitution or laws of the United States and is subject to collateral attack, including a claim of ineffective assistance of counsel." *Id.* The government responded to Mr. Robinson's petition by arguing that it was both untimely and insufficient. (Doc. 104). Mr. Robinson's counsel filed a reply in which he argued, as Mr. Robinson did on direct appeal that, the Petitioner's sentence should not have contained a career offender enhancement and his counsel was ineffective for failing to seek a downward departure from the Court under U.S.S.G. § 4A1.3. (Doc. 107). For the reasons set forth below, Mr. Robinson's petition for relief under 28 U.S.C. § 2255 will be denied.

or wrong." *Id.* at 484. In instances where a claim is procedurally defaulted, a COA should only issue if "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*

For the reasons set forth above, the Court finds Mr. Robinson has not shown the Court's decision was "debatable or wrong" within the meaning of Slack. Accordingly, the Court declines to issue a certificate of appealability.

III. Conclusion

The motion, together with the files and record in this case "conclusively show that Defendant is entitled to no relief." 28 U.S.C. § 2255; see also Rule 4(b), 28 U.S.C. § 2255 Rules. Therefore, the Court finds the motion may be resolved without an evidentiary hearing. United States v. Johnson, 327 U.S. 106, 111 (1946); Baker v. United States, 781 F.2d 85, 92 (6th Cir. 1986). Mr. Robinson's conviction and sentence are valid and his motion pursuant to 28 U.S.C. § 2255 is denied.

IT IS SO ORDERED.

/s/Lesley Wells
UNITED STATES DISTRICT JUDGE